



ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,
Plaintiff

v.

ALBERT EVANS CURLIN,
Defendant/Movant.

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3:92-CR-139-T

3-06CV0371-T

**ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions and a recommendation in this case. No objections were filed. The District Court reviewed the proposed findings, conclusions and recommendation for plain error. Finding none, the Court ACCEPTS the Findings, Conclusions and Recommendation of the United States Magistrate Judge and DENIES Movant's rule 60(b) motion.

Alternatively the Court CONSTRUES the Rule 60(b) motion as a motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255, and DIRECTS the Clerk of the Court to open a new civil action, FILE the instant motion in that action as a § 2255 motion (nature of suit 510 directly assigned to the same district judge and magistrate judge), and without further judicial action, immediately DISMISS the new § 2255 action without prejudice for want of jurisdiction to Movant's right to file a motion for leave to file a second or successive § 2255

motion in the United States Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. §§ 2244(b)(3)(A) and 2255.

It is further ordered that Movant's motion for appointment of counsel, filed on January 12, 2006, is DENIED as moot.

SO ORDERED this 25 day of Feb., 2006.


UNITED STATES DISTRICT JUDGE